



Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-670 et. seq.
Regulation title	Regulations Governing the Operation of Private Day Schools for Students with Disabilities
Action title	Enacting new regulations for private day schools for children with disabilities.
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

Private day schools for students with disabilities are currently regulated by *The Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* that also covers private career schools. The regulations separate the current complex and intertwined regulations, providing clarity and specificity while ensuring that private day schools are licensed and operated in accordance with § 22.1-16 and §22.1-321 of the *Code of Virginia*.

The new regulations for private day schools for students with disabilities give clear, orderly requirements for the establishment and conduct of such schools. There have been several changes in the Code and in applicable standards that need to be updated in the regulations. The regulations set forth requirements addressing the management and conduct of the schools including staff qualifications, physical facilities, instructional programs, student services, records and contracts, and cancellation and refund policies. They provide schools the

guidance necessary to implement programs that are in compliance with the law and that protect both the students' and the proprietors' interests. The regulations provide a clear process by which a school receives and maintains a license or a certificate to operate. Types of approval, advertising, student guaranty provisions, denial, revocation, suspension or refusal to renew certificates to operate or licenses are detailed in the document. Specific requirements clarify academic standards and educational programs, administrative, instructional, and support personnel, behavior management, accessibility, provisions for health care, and safety.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Board of Education approved final proposed *Regulations Governing the Operation of Private Day Schools for Students with Disabilities* on March 24, 2004. These final proposed regulations include changes made to the regulations based on public comment received at the public hearing on January 7, 2004, and comment received during the public comment period held between December 1, 2003 and February 2, 2004.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The scope of legal authority is defined by §22.1-16 of the Code of Virginia that states, "The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." Chapter 16 of the *Code of Virginia* §22.1-319 through 22.1-335 provides the legal requirements for private trade, technical, business and correspondence schools and schools for students with disabilities. The Board of Education is charged in §22.1-321 with promulgation of regulations for the management and conduct of the schools (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod=TOC2201000001600000000000>). The schools for students with disabilities must also comply with federal special education law, 20 U.S. C. §1400-1485, the *Individuals with Disabilities Education Act*, and *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (<http://www.pen.k12va.us/VADOE/Instruction/Sped/varegs.pdf>).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulations is to separate the current complex and intertwined *Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* that also cover private career schools, in part at the recommendation of the staff of the Department of Planning and Budget. Also, legislation considered by the 2004 General Assembly would move the regulation of proprietary career schools and correspondence schools to the State Council of Higher Education for Virginia (SCHEV). It is intended that revised regulations for the career schools and new regulations for the private day schools for students with disabilities be promulgated to provide clarity and specificity for each type of school. This would remove questions about applicability and ensure that both schools are licensed and operated in accordance with § 22.1-16 and §22.1-321 of the *Code of Virginia*.

The proposed new regulations for private day schools for students with disabilities give clear, orderly requirements for the establishment and conduct of such schools. Regulations must be current and provide schools the guidance necessary to provide programs that are in compliance with the law and that protect both the students' and the proprietors' interests. The regulations provide a clear process by which a school receives and maintains a license to operate.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

- Fees are eliminated to conform to an action of the General Assembly to eliminate collection of fees from private day schools for students with disabilities.
- On-site visits currently required by regulation every two years will be aligned with the Code which allows the issuing of licenses for up to three years. The regulations will require visits every three years and allow unannounced visits during the three-year time period.
- Language is added that requires criminal background checks including fingerprinting of full or part-time, permanent or temporary employees of schools.
- Language was added to ensure that schools have policies and procedures for behavior management that protect the safety and well being of students at all times.
- Language was added to conform to the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (SOA) to require the private day schools to be maintained in a manner ensuring compliance with the *Virginia Uniform Statewide Building Code* and regulations of the Board pertaining to facilities. Also added is the

establishment of procedures to deal with emergencies including hostage situations, bomb threats, power outages, fires and inclement weather.

- Medication management including the transportation and dispensing of medications is addressed.
- Schools serving privately placed students are required to offer access to a tuition insurance plan if they financially obligate students for more than quarterly increments of the annual tuition.
- Provisions were added to conform to the current *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

The advantages to parents of students who are placed in private day schools for students with disabilities, persons wishing to establish and operate such schools, local education agencies and Community Services Act team, and the general public is a set of clear concise fully applicable and orderly requirements for the establishment and conduct of such schools. There are no known disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
8 VAC 20-670-10	“Behavior management” means those principles and methods employed by a school to help an individual student achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized instructional plan and	The word “program” was added following the words “behavior management.”	This change was made to support the change needed to clarify the intent of 8VAC 20-670-130 F.

<p>8 VAC 20-670- 60</p>	<p>written policies and procedures governing service expectation, educational and treatment goals, and safety and security.</p> <p>Certification or licensing of branch campus/extension classroom.</p>	<p>The words "Certification or" are stricken.</p>	<p>Editorial change for consistency. Certification should have been replaced by licensing throughout the proposed regulations.</p>
<p>8 VAC 20-670- 130 F.</p>	<p>Application of a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time-specific plan that is consistent with sound therapeutic practice. Consent of the individual, parent or guardian, and the placing school division is required.</p>	<p>The word "technique" is replaced with the word "program."</p>	<p>The word "technique" in F. may give a misleading impression of the intent. There has never been any intent to have a school get permission from all parties to administer each discrete component of a behavior management program. It is (critical) important that the "technique(s)" be consistent with sound therapeutic practice. The behavior management program would have a range of techniques or interventions that are generally available for review by the staff that uses them and parents and placing agencies if requested but that individually do not require approval. Replacing the word "technique" with the word "program" should make the section clearer and more aligned with a "behavioral intervention plan" or BIP.</p>
<p>8 VAC 20-670- 150.A.</p>	<p>A report of physical examination not more than three years old by a qualified healthcare provider and an up-to date immunization record shall be on file for each student.</p>	<p>Add the word "comprehensive" and delete three-year requirement.</p>	<p>The three-year requirement is a higher standard than required of the public school that under federal and state special education laws and regulations maintains responsibility</p>

<p>8 VAC 20-670- 150 F.</p>	<p>Training shall be provided to all staff in medication procedures and effects and in infection control measures including universal precautions. All staff administering medication shall receive approved training for medication management. At least one person trained in first aid and CPR shall be available at all times to the students at the school and on field trips.</p>	<p>Replace the word “trained” to “certified.” Delete “on field trips and add to 8VAC 20-670-160 A. “or school sponsored activities.”</p>	<p>for publicly placed students in day schools.</p> <p>Certified is a better choice of words. The issue with field trips is addressed by ensuring appropriate safety measures are in place during school-sponsored activities taking place outside of regular school hours or off the school premises.</p>
<p>8 VAC 20-670- 160 A.</p>	<p>All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia. Appropriate safety measures that take into consideration the age range and disabling conditions of students served at the school shall be taken by staff members or other adults who may transport students to and from school.</p>	<p>(See above)</p>	<p>(See above)</p>
<p>8 VAC 20-670- 200 A.</p>	<p>Teachers of academic courses in elementary and non-departmentalized middle and high school programs shall hold a current Virginia teaching license issued by the board with endorsement in at least one of the specific areas of disability served by the school, or otherwise comply with board regulations. “Otherwise qualify” means that a teacher without endorsement in a specific area of disability must secure a Special Education Conditional License from the board</p>	<p>The language beginning with “board regulations.” at the end of the first sentence down to “Licensure Regulations for School Personnel” is stricken and “-10 et. seq.” is added after 20-21.</p>	<p>Wording is deleted that is not necessary since the requirements for teachers will be in the Licensure Regulations for School Personnel.</p>

<p>8 VAC 20-670-220 4.</p>	<p>and agree in writing to earn credit at the rate of six semester hours per year toward full endorsement beginning in the next semester. Requirements for a teaching license and procedures for securing a license are outlined in the Licensure Regulations for School Personnel (8 VAC 20-21).</p> <p>Results of a current x-ray or tuberculin test and other health records required by §22.1-300 of the Code of Virginia and applicable regulations of the Virginia Health Department.</p>	<p>The words “a current” are deleted.</p>	<p>The <i>Code of Virginia</i> directs the school back to the local health department for the practice in that locality and defers to applicable regulations of the Virginia Department of Health. Tuberculosis is on the rise in Virginia and some localities, through their health department, may have a different standard. It would be up to each school to determine if and when additional testing is needed in consultation with the local health department.</p>
<p>8 VAC 20-670-280 A.</p>	<p>Each school shall develop and publish a handbook describing the school’s programs and policies that shall be submitted to the department for review and approval prior to publication. All printed materials shall be accurate concerning the schools’ requirements for admission, curricula, programs and services, graduations requirements, tuition and other fees or charges, and terms of tuitions and other fees. Copies shall be filed with the board or department.</p>	<p>The first sentence is deleted from the section and the handbook requirement is relocated to the section on application requirements.</p>	<p>The <i>proposed</i> language, “shall be submitted to the department for review and approval prior to printing” would not be necessary, as new applicants cannot publish before the school is licensed.</p>
<p>8 VAC</p>	<p>Application requirements</p>	<p>Number 15 becomes number 16</p>	<p>(See above)</p>

20-670-80. 15.	for schools seeking a license to operate. 15. Any additional information as the board or department may deem necessary to carry out the provisions of the Code of Virginia.	and the new number 15 will state “a handbook describing the school’s programs and policies.”	
8 VAC 20-670-300 B.	If there is a change in ownership of a school, the current owner shall notify the department at least 30 days prior to the proposed date of sale and provide a copy of the agreement of sale. An application for an original license to operate or certificate of program compliance, including all attachments listed in 8 VAC 20-670-30, shall be submitted to the department by the new owner within 30 days following the effective date of the change.	The words “certificate of program compliance” are stricken.	Editorial change for consistency. Certificate of program compliance should not have been in the proposed regulations as it is redundant.
8 VAC 20-670-350 3.	Violations of any commitment made in an application for a license or certificate of program compliance.	The words “certificate of program compliance” are stricken.	Editorial change for consistency. License replaces certificate throughout the regulations and is the only term to be used to avoid confusion.
8 VAC 20-670-360 The department shall make such an investigation upon written complaint of any individual setting forth facts which, if proved, would constitute grounds for denial, refusal, suspension, or revocation of a certificate or license.	The words “certificate or” are stricken.	Editorial change for consistency. License replaces certificate throughout the regulations and is the only term to be used to avoid confusion.
8 VAC 20-670-370 If the school disagrees with the recommendations or corrective actions, the department shall hold an informal hearing to determine whether further action (i.e., revocation, suspension or refusal to renew a certificate) is	The word “certificate” is replaced with the word “license.”	Editorial change for consistency. License replaces certificate throughout the regulations and is the only term to be used to avoid confusion.

8 VAC 20-670- 400	warranted. Any owner of a school that has had a certificate or license revoked or denied or has been refused renewal shall not be allowed to reapply for at least 12 months have passed since the date the formal action was taken.	The words “certificate or” are stricken.	Editorial change for consistency. License replaces certificate throughout the regulations and is the only term to be used to avoid confusion.
8 VAC 20-670- 440 In the event that the complainant is not satisfied with the internal resolution or prefers, he may file a complaint with the Office for Private Special Education Day Schools, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120.	“Office or Private Special Education Day Schools” is replaced with “Office of Private Day Schools for Students with Disabilities”.	Office name changed to match the title of the regulations for ease in location.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Jeanne Knieriemen, Executive Director of the Lead Center, Inc.	We all need to be held to a high standard.	No response required
Phil Alexander, Principal for Operations and Anniken Vittorini, Principal for Programs, Oyster Point Academy	Teacher licensure requirement should be in sync with No Child Left Behind.	Language changed to emphasize requirement for compliance with The Licensure Regulations for School Personnel.
Sally Sibley, Executive Director of PHILLIPS School –	Strongly suggested omitting the reference to the SOLs. Urged dropping F regarding behavior management techniques Suggested the requirement for student physical examinations	Recommend that language remain (see Summary of Public Comment) Changed word “technique” to “program” including adding program to definition section. Deleted three year requirement.

<p>Annandale</p>	<p>every three years be the parent's decision. Questioned if "trained" meant "certified full training" Expressed the opinion that having staff trained in CPR and first aide on field trips was excessive. Requested the word current be removed from the regulations regarding x-ray or other tuberculin test for staff. Expressed concern that documentation of staff development in personnel files was administratively burdensome. Stated that requiring that a handbook be approved before printing was not only intrusive but bureaucratic micro-management.</p>	<p>Replaced word "trained" with the word "certified." Added school sponsored activities to times when safety measures must be taken into consideration.</p> <p>"Current" was removed from the regulations.</p> <p>Recommend leaving language as proposed.</p> <p>Placed the requirement in the application section of the regulations.</p>
<p>Michael Farley, President and Judith Lemke, Chairmen, Governmental Relations Committee, Virginia Association of Independent Specialized Education Facilities (VAISEF)</p>	<p>Letter of support for the regulations and the process that included all of the private special education day school. "Of particular importance to VAISEF member schools are the provisions that establish additional clarity in areas such as training of staff regarding the use of behavior management techniques and the relation of such training to the policies and procedures used in a school, medication management practices consistent with Virginia School Health Guidelines, professional and support staff preparation and licensure, and the codification of Department oversight aligned with efficient and sound best practice."</p>	<p>No response required.</p>

Also see Attachment A

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section	Proposed new section	Current requirement	Proposed change and rationale
-----------------	----------------------	---------------------	-------------------------------

number	number, if applicable		

New Regulations

Suggested changes from the originally proposed regulations are detailed in Attachment A Summary of Public Comment

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The positive family impact of these proposed regulations comes from the clear articulation of what families can expect of and from private day schools for students with disabilities in the way of staff qualifications, physical facilities, instructional programs, student services, records and contracts, cancellation and refunds including their contractual rights and school closings. The regulations also provide a tool for families to use should they have a complaint.

The availability of private day schools for students with disabilities provides families and placing school divisions with viable, generally less restrictive, alternatives to residential school services. The child continues to live in the home with his family and be part of the community. The schools generally list among their goals the promotion of self-sufficiency and self-pride. The special education day schools give students whose educational needs cannot be met in the public sector an opportunity for both academic and personal success. Many of the day school students gain the skills necessary to reenter the public education system.

The fiscal impact on the families would be a discretionary one which cannot be determined as local schools divisions are required to provide a free appropriate education for students identified as eligible for special education services. If the local school cannot provide the needed services themselves, they are, by law, required to fund the provision of education services elsewhere which may be at a private special education day school. Parents who unilaterally place their children would have to pay for the services just as would a parent who places a child in a regular private school.

ATTACHMENT A:
(Begins next page)

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p>8 VAC 20-670-110 Instructional Programs</p> <p>C.2. Individualized education programs shall address participation in the general curriculum and acquisition of the knowledge and skills contained in the Virginia Standards of Learning for English, mathematics, science, and history/social science.</p> <p style="text-align: center;">② ② ② ② ② ② ② ② ② ②</p>	<p>PHILLIPS –“It is not clear in this wording what is expected in the IEP regarding acquisition of knowledge and skills contained in the Virginia SOLs. Clearly, it would be inappropriate to require goals and objectives in every IEP in these areas. The IEP was never meant to include everything in a child’s curriculum but only those goals and objectives of high priority and related to his disability. Many of our students are not on grade level and this information would be meaningless for them.</p> <p><i>If the intent is to require that a student’s IEP address why he/she is not working on specific areas contained in the SOLs for his/her grade level, then this need to be made clear in the regulation. However, this would be burdensome paperwork for teachers. We strongly recommend omitting the reference to the SOLs.”</i></p> <p style="text-align: center;">② ② ② ② ② ② ② ② ② ②</p>	<p><i>The general curriculum in Virginia’s public schools is built on the Standards of Learning. Nothing in the proposed language would “require goals and objectives in every IEP in these areas.”</i></p> <p>Present levels of performance must include how the child’s disability affects involvement and progress in the general curriculum. (§8VAC 20-80-62 F.1. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.)</p> <p>Recommend that the language remain as written.</p> <p style="text-align: center;">② ② ② ② ② ② ② ② ② ②</p>
<p>8 VAC 20-670-130 Behavior Management Programs</p> <p>B. All interested parties, including students, their parents, guardians and local education agencies when the student is publicly placed, shall be informed of the policies and rules of conduct through written information contained in the schools handbooks, brochures, enrollment contract or other publications. Informed consent</p>	<p>PHILLIPS: “ The entire PHILLIPS program is a behavior program and that in large part is the reason for our success with previously un-reached children. If it is truly meant in the proposed regulations that every behavioral program no matter the target behavior or the nature of the programming is to have informed consent, these regulations are burdensome beyond belief. If to satisfy B, we could have parents sign something saying they realize their child will be in a behavior program and generally describe some of the techniques, the requirement would be less of a bureaucratic nightmare. If the regulations remain it should specify that approach as being acceptable”</p> <p><i>“For F, the focus really should be on</i></p>	<p>The word “technique” in F. may give a misleading impression of the intent. There has never been any intent to have a school get permission from all parties to administer each discrete component of a behavior management program. It is (critical) important that the “technique(s)” be consistent with sound therapeutic practice. The behavior management program would have a range of techniques or interventions that are generally available for review by the staff that uses them and parents and placing agencies if requested but that individually do not require approval. Replacing the word “technique” with the word “program” should make the section clearer and more aligned with a “behavioral intervention plan” or BIP.</p> <p>Recommend that the word “technique” be changed to “program” in 8VAC20-670-130 F.</p>

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p>shall be obtained before implementation of any behavior management program.</p> <p>F. Application of a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time-specific plan that is consistent with sound therapeutic practice. Consent of the individual, parent or guardian, and the placing school division is required.</p> <p>G. Individual applications of formal behavior management techniques including use of physical restraints shall be reported to the parents and documented in the student's record and, at minimum, include date and time, staff involved, circumstances and reasons for use, including other behavior management techniques attempted, duration, type of technique</p>	<p><i>specific techniques not behaviors. We have many techniques and programs for dealing with extreme negative behaviors. We obtain the guardian's permission for seclusion and restraint for the few students with whom they are used. There are many programs with positive consequences and F., as written, requires consent of all these parties; what exactly is one protecting against in this instance? Is it really reasonable to have obtained consent to provide a reward for positive behavior? We believe that adequate protection lie in G and J. To do more really handicap the schools that are able to make headway with these students. Under these regulations staff will spend their time in even more paper work and phone calls."</i></p> <p><i>"In F, to mandate the consent of the individual is to not understand the issues or the student population. Let's take a 14-year-old male exhibiting aggression. Say the behavioral program is that this student will have to do his work apart from his class for a half day. We are going to have to get approval for this? He is not going to agree; he is at the school for a reason. Then we also have to have the consent of the parent/guardian and the placing agency each time we tweak a program? We devise programs for negative behavior daily and change them often because your sometimes first try works and sometimes it doesn't. What is being proposed frankly not only ties ones hands behind the back but also creates an enormous administrative burden for the school, the parent and the placing agency."</i></p> <p><i>We cannot imagine the LEA wanting their staff to spend time approving each behavior program at PHILLIPS.</i></p> <p><i>We urge dropping F on the grounds that G and J provide the procedural precautions necessary.</i></p> <p><i>Of course, we should have permission of the parent to use certain safety techniques such as restraint or seclusion. Of course,</i></p>	<p>Simultaneously, recommend the addition of the word "program" in the definition section 8VAC 20-670-10 after the words "behavior management."</p> <p>Revised section to read</p> <p>F. Application of a formal behavior management technique program designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time-specific plan that is consistent with sound therapeutic practice. Consent of the individual, parent or guardian, and the placing school division is required.</p> <p>Revise definition to read</p> <p>"Behavior management program" means those principles and methods employed by a school to help an individual student achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized education program or individualized instructional plan and written policies and procedures governing service expectation, educational and treatment goals, and safety and security.</p>

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p>used, and outcomes.</p> <p>J. The following actions are prohibited:</p> <ol style="list-style-type: none"> 1. Any action that is humiliating, degrading, or abusive 2. Deprivation of drinking water or food necessary to meet a student's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the student's file; 3. Denial of toilet facilities or toileting assistance; 4. Use of restraint as punishment, reprisal, or for the convenience of staff; 5. Corporal punishment; 6. Deprivation of health care including counseling; and 7. Use of mechanical and chemical restraints. <p>8 VAC 20-670-10. Definitions.</p> <p><i>"Behavior management" means those principles and methods employed by a school to help an</i></p>	<p><i>the placing agency should know we use those techniques with their student."</i></p> <p>VAISEF: "Of particular importance to VAISEF member schools are the provisions that establish additional clarity in areas such as training of staff regarding the use of behavior management techniques and the relations of such training to the policies and procedures used in a school, medication management practices consistent with Virginia School Health Guidelines, professional and support staff preparation and licensure, and the codification of Department oversight procedures that align with efficient and sound best practice."</p> <p style="text-align: center;">● ● ● ● ● ● ● ● ● ●</p> <p>PHILLIPS: "It is our understanding that public schools do not require physical examinations every three years. We do not understand why private schools are being held to a higher standard than the public schools."</p> <p><i>"We have struggled with this requirement in recent years as the physical exam is no longer required for a 3-year evaluation and some parents cannot afford this on a routine basis. Perhaps the regulations could be changed to require the private school suggests and documents the request for a physical exam every 3 years but leaves the decision to the parent. The reality is that the LEA or we could not</i></p>	<p style="text-align: center;">● ● ● ● ● ● ● ● ● ●</p> <p>§22.1-270 of the Code of Virginia states: "No pupil shall be admitted for the first time to any public kindergarten or elementary school in a school division unless such pupil shall furnish, prior to admission, (i) a report from a qualified licensed physician, or a licensed nurse practitioner or licensed physician assistant acting under the supervision of a licensed physician, of a comprehensive physical examination of a scope prescribed by the State Health Commissioner performed within the twelve months prior to the date such pupil first enters such public kindergarten or elementary school or (ii) records establishing that such pupil furnished such report upon prior admission to another school or school division and providing information contained in such report.</p> <p><i>The requirement for a physical and immunization report that is current to within three years received considerable discussion during the drafting of the regulations. While the requirement would provide a modicum of protection to the student and to the school, the commenter is correct that it is a higher standard than required of the public school.</i></p> <p>Recommend adding the word <i>comprehensive</i> and striking the three year requirement.</p>

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p><i>individual student achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized education program or individualized instructional plan and written policies and procedures governing service expectation, educational and treatment goals, and safety and security.</i></p> <p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>8VAC 20-670-150 Provisions for Health</p> <p>A. A report of physical examination not more than three years old by a qualified healthcare provider and an up-to date immunization record shall be on file for each student.</p>	<p><i>withhold education from the child if the parent does not comply.”</i></p>	<p>Revised section to read:</p> <p>A. A report of a comprehensive physical examination by a qualified healthcare provider not more than three years old and an up-to-date immunization record shall be on file for each student.</p> <p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>Trained means the person is certified and perhaps the better choice of words would be “certified.” The issue appears to be the definition of field trip. Job sites and community skills training sites are not generally considered to be field trips.</p> <p>Recommend replacing the word “trained” with the word “certified” and deleting “and on field trips”. Add to 8 VAC 20-670-160. A. “or school sponsored activities.”</p> <p>Revised sections to read:</p> <p>8 VAC 20-670-150 F. Training shall be provided to all staff in medication procedures and effects and in infection control measures including universal precautions. All staff administering medication shall receive approved training for medication management. At least one person trained certified in first aid and CPR shall be available at all times to the students at the school and on field trips.</p> <p>8 VAC 20-670-160 A. All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia. Appropriate safety measures that take into consideration the age range and disabling conditions of students served at the school shall be taken by staff members or other adults who may transport students to and from school or school sponsored activities.</p>

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>8 VAC 20-670-150 F. Training shall be provided to all staff in medication procedures and effects and in infection control measures including universal precautions. All staff administering medication shall receive approved training for medication management. At least one person trained in first aid and CPR shall be available at all times to the students at the school and on field trips.</p> <p>8VAC 20-670-160 A. All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia. Appropriate safety</p>	<p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>PHILLIPS: "F. Last sentence: "At least one person trained in first aid and CPR shall be available at all times to the students at the school and on field trips." <i>"No definition of "trained in first aid and CPR" is given. If an annual overview is sufficient we have no problem but ask the regulation provide such a definition. If the definition would be 'certified full training" then we feel that the requirement for field trips is excessive."</i> <i>"We do have people trained in first aid and CPR at the school at all times. We question the need to have someone trained in first aid and CPR for field trips. PHILLIPS students are involved in hundreds of field trips annually as students go off campus daily to job sites and to community skills training sites. In addition, we have class instructional trips. Each of our buses and cars has a first aid kit. To require that each field trip have a staff</i></p>	<p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>Under No Child Left Behind (NCLB) if a student with a disability is receiving instruction in core academic subjects with a recognized course code in those subject areas, the teachers of those subjects must meet the requirement of the law. Special Education is not identified as a core academic area in NCLB</p> <p>Recommend that the proposed language be changed to read:</p> <p>Teachers of academic courses in elementary and nondepartmentalized middle and high school programs shall hold a current Virginia teaching license issued by the board with endorsement in at least one of the specific areas of disability served by the school, or otherwise comply with board regulations. "Otherwise qualify" means that a teacher without endorsement in a specific area of disability must secure a Special Education Conditional License from the board and agree in writing to earn credit at the rate of six semester hours per year toward full endorsement beginning in the next semester. Requirements for a teaching license and procedures for securing a license are outlined in the Licensure Regulations for School Personnel (8 VAC 20-21).</p> <p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>The <i>Code of Virginia</i> directs the school back to the local health department for the practice in that locality and defers to applicable regulations of the Virginia Department of Health. Tuberculosis is</p>

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p>measures that take into consideration the age range and disabling conditions of students served at the school shall be taken by staff members or other adults who may transport students to and from school.</p> <p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>8VAC 20-670-200. Teachers</p> <p>A. Teachers of academic courses in elementary and nondepartmentalized middle and high school programs shall hold a current Virginia teaching license issued by the board with endorsement in at least one of the specific areas of disability served by the school, or otherwise comply with board regulations. "Otherwise qualify" means that a teacher without endorsement in a specific area of disability must secure a Special Education</p>	<p><i>member trained in first aid and CPR is excessive. Is this requirement made of all public school field trips?</i></p> <p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>OYSTER POINT ACADEMY: "Section 8VAC 20-670-200 Teachers: Teacher Licensure, discusses teacher in two models (departmentalized and nondepartmentalized). We feel these proposed regulations are more rigorous than those dictated by the No Child Left Behind Act of 2001.</p> <p><i>We would like to see the regulations governing private day school be more in sync with the provisions of No Child Left Behind."</i></p>	<p>on the rise in Virginia and some localities, through their health department, may have a different standard. It would be up to each school to determine in consultation with the local health department if and when additional testing is need.</p> <p>Recommend the words "a current" be removed.</p> <p>Revised section to read:</p> <p><i>8 VAC 20-670-220 Personnel files.</i></p> <p><i>Personnel files for staff shall be maintained and shall include the following documentation:</i></p> <ol style="list-style-type: none"> 4. Results of a current x-ray or tuberculin test and other health records required by §22.1-300 of the Code of Virginia and applicable regulations of the Virginia Health Department. <p><i>This should not pose an administrative burden as staff could be required to provide a listing to their supervisor on the day of their evaluations to be placed in their files. Documentation that the school may want to place in the individual files upon receipt may include proof of training in a behavior management program, CPR, medication management, and/or first aide certification. The regulation as drafted does not say how often or what is placed in the individual personnel files at a particular time. The school's policy should dictate that. Individual documentation is necessary for re-certification of teachers and other licensed staff.</i></p> <p>Recommend language remain as written.</p> <p style="text-align: center;">② ② ② ② ② ② ② ② ②</p>

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p>Conditional License from the board and agree in writing to earn credit at the rate of six semester hours per year toward full endorsement beginning in the next semester. Requirements for a teaching license and procedures for securing a license are outlined in the Licensure Regulations for School Personnel (8 VAC 20-21).</p> <p>B. Teachers in middle and high schools that are departmentalized just hold a current Virginia teachers license with endorsement in the academic area they are instructing. A sufficient number of appropriately endorsed special education teachers must be available to case manage individualized education programs (IEPs) and to provide disability specific technical assistance and instruction. Ongoing staff development must include disability specific training</p> <p>② ② ② ② ② ② ② ② ② ②</p> <p>8 VAC 20-670-220 Personnel files.</p>	<p>② ② ② ② ② ② ② ② ②</p> <p>PHILLIPS: "We request that the word "current" be taken out to the regulations. It is our understanding that only one test is required in the cited law though any school may chose to test more than this. Local public schools do not do repeat testing to our knowledge. "Current" is ambiguous and may cause unnecessary testing. Again, is more being asked of private schools than public schools? We ask that screening/testing be required only at hiring."</p>	<p>8 VAC 20-670-280 Advertising and publications</p> <p>Recommend Delete first sentence in proposed language and amend 8 VAC 20-670-80 by adding a new #15 and moving #15 to #16. The <i>proposed</i> language, "shall be submitted to the department for review and approval prior to printing" would not be necessary, as new applicants cannot publish before the school is licensed.</p> <p>Revised section to read:</p> <p>8 VAC 20-670-280. Advertising and publications.</p> <p>D. Each school shall develop and publish a handbook describing the school's [programs and policies that shall be submitted to the department for review and approval prior to publication. All printed materials shall be accurate concerning the schools' requirements for admission, curricula, programs and services, graduations requirements, tuition and other fees or charges, and terms of tuitions and other fees. Copies shall be filed with the board or department.</p> <p>8 VAC 20-670-80. Application requirements for schools seeking a license to operate.</p> <p>15. <i>A handbook describing the school's programs and policies.</i></p> <p>15. 16. Any additional information as the board or department may deem necessary to carry out the provisions of the Code of Virginia.</p>

<i>Original Proposed Regulation</i>	<i>Public Comments</i>	<i>Recommendation from DOE</i>
<p><i>Personnel files for staff shall be maintained and shall include the following documentation:</i></p> <p>4. Results of a current x-ray or tuberculin test and other health records required by §22.1-300 of the Code of Virginia and applicable regulations of the Virginia Health Department.</p> <p>6. Documentation of staff development</p>	<p>PHILLIPS: "For programs with a large number of staff this could be a significant administrative burden. We would ask that the language be changed to allow for a central, yearly list or other way to document staff development rather than in each person's personnel file. It could be required that the list include every member so that one could easily see if someone had no or little development activities."</p>	

<i>Original Proposed Regulation</i>	<i>Public Comments</i>	<i>Recommendation from DOE</i>
<p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>8 VAC 20-670-280. Advertising and publications.</p> <p>A. Each school shall develop and publish a handbook describing the school's programs and policies that shall be submitted to the department for review and approval prior to publication. All printed materials shall be accurate concerning the schools' requirements for admission, curricula, programs and services, graduations requirements, tuition and other fees or charges, and terms of tuitions and other fees. Copies shall be filed with the</p>		

Original Proposed Regulation	Public Comments	Recommendation from DOE
<p>board or department.</p> <p>8 VAC 20-670-80. Application requirements for schools seeking a license to operate.</p> <p>16. Any additional information as the board or department may deem necessary to carry out the provisions of the Code of Virginia.</p>	<p style="text-align: center;">② ② ② ② ② ② ② ② ②</p> <p>PHILLIPS: "To require that a handbook be approved before printing is not only intrusive but bureaucratic micro-management. We suggest that a required list of policies and procedures be developed but that the method of publication and timing be left to the school. Larger schools have multiple publications and it may be inappropriate to their operation to have one manual. When compliance monitoring is done, any deficiencies can be addressed at that time."</p>	